Clinic Provides Environmental Defense, Legal Training

Kenneth T Kristl
Exploring the Complexities of Environmental Justice

By Serena Williams

“Why don’t they just leave?”

That was the question a student asked after viewing a film on the struggle of residents to rid their Chester, Pennsylvania, neighborhood of waste processing facilities. The documentary, “Laid to Waste,” was shown as part of the Environmental Justice Seminar, a course that is among Widener’s environmental law offerings. Through film, role simulation exercises, neighborhood observations, research papers, and case studies, law students explore the concept of environmental justice, a key development in environmental law over the last 20 years.

Environmental justice examines questions, and challenges policies and practices that can result in negative environmental impacts on communities populated by people of color and by the poor. Initially, the term was associated with protests by communities of color fighting against the siting of landfills, hazardous waste facilities, and industrial plants in their neighborhoods. But the movement drawing on the principles of both environmental law and civil rights law. The concept has since expanded to encompass other concerns, including the unequal enforcement of environmental laws, the inequitable distribution of environmental amenities (beach access, parks, open green space), and the composition of—and policy positions taken by—traditional conservation groups.

Chester—the community portrayed in the documentary viewed during the Environmental Justice Seminar—is only a short distance from the School of Law’s Delaware Campus. Home to several toxic and hazardous waste treatment facilities, Chester is typical of many areas struggling with environmental justice issues: it is a community of color and low-income households. Chester residents have used numerous strategies in their fight for environmental justice. They have formed grassroots organizations, written letters to governmental decision makers, made phone calls, and publicized their plight in the media. In at least one instance, they turned to the courts for relief from their environmental ills, pursuing legal action against the Pennsylvania Department of Environmental Protection (DEP).

While viewing the documentary on the Chester residents’ fight, students were stunned by the heavy truck traffic that the residents experienced daily. Upon hearing the noise and seeing the pollution and vibrations from the numerous, heavily loaded dump trucks passing by homes where children were playing and residents were attempting to enjoy an evening on their front porch, one student asked that crucial question, “Why don’t they just leave?”

The student’s question generated discussion of a wide range of issues impacting environmental justice, many of which were not readily identifiable as relating to environmental law: the availability of affordable housing, the zoning process, the selection of public transportation routes, employment rates, the presence of playgrounds and parks, community aesthetics, and moving and relocation costs. The question inadvertently encapsulated the complexities of environmental justice, described by one environmental law professor as a “political movement, a social phenomenon, and a legal quagmire.” Underlying the question are conflicting viewpoints about whether environmental disparities even exist and, if they do, what causes underlie the existence of these disparities and who is responsible for correcting them.

Environmental justice has reshaped thinking about environmental law by asking the questions of the traditional environmental law framework: who bears the burden, and who reaps the benefit of current environmental law, policy, and practice? By studying environmental justice, students learn not only that the answer to the question, “Why don’t they just leave?” is not a simple one, but also that there are a host of questions still left to be asked.

Professor Serena M. Williams teaches a seminar on environmental justice. She served as a commissioner on the Kentucky Environmental Quality Commission and as a member of the Kentucky Institute for the Environment and Sustainable Development.

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Small things can have big consequences. Take the Florida scrub jay, a foot-long, blue-and-white bird that has seen its population decline severely as rampant human development has decimated its habitat, Florida’s oak scrub. To save the population from further decline, the Turtle Coast Sierra Club and the Florida Native Plant Society filed a petition with U.S. Fish and Wildlife Service to change the bird’s designation from a threatened to an endangered species.

Despite a mandated 90-day response period, U.S. Fish and Wildlife Service did not respond for more than two years. Helped by Widener’s Environmental and Natural Resources Law Clinic, the petitioners filed suit, and for the Florida scrub jay, the result is hope—a court order requires the agency to review the petition, with a decision due this coming January. For clinic students working on this case, the outcome was an invaluable experience practicing law.

With its partner, the Mid-Atlantic Environmental Law Center (MAELC), the Environmental and Natural Resources Law Clinic provides hands-on learning for Widener law students while defending the environment from Maine to Puerto Rico. Now in its 17th year of operation, the clinic’s focus is first and foremost on the students. Working on actual cases, clinic students practice the very legal skills they will use after they graduate—conducting factual investigations, drafting legal notices, complaints, discovery, and motions, interacting with clients, and formulating case strategy.

Clinic students consistently describe their year-long internship as one of the best experiences they had in law school. “It made me really enthusiastic about the law,” said Jennifer Murphy ’02, who—as a staff attorney for MAELC—has continued her involvement with the clinic. “It really solidified my choice to become a lawyer.”

The clinic and MAELC jointly handle cases that fall under a variety of environmental statutes, the Clean Air Act, Clean Water Act, Endangered Species Act, the National Environmental Policy Act, and state environmental laws. Some of these cases present the students and supervising attorneys with intellectually challenging issues that are so new or unique that they work on a blank slate, formulating arguments that have never been made before. For example, when BP sought permission under Delaware’s Coastal Zone Act to build a liquefied natural gas terminal on the New Jersey shore of the Delaware River—which is considered part of the state of Delaware—little direct precedent existed. Undaunted, clinic students helped formulate a successful argument to bar the facility by applying recognized principles of statutory construction to the act, thereby placing the terminal squarely within the act’s prohibitions.

The clinic also works to educate the public. Under Murphy’s direction, clinic students helped develop a MAELC educational program on Total Maximum Daily Loads (TMDLs), government-issued limits on the amount of a particular pollutant in a specific water body, and helped present it to more than 20 local groups. The program is to educate groups so they can interpret and comment on TMDLs and get involved in the process of creating and adjusting them.

Like Murphy, other former clinic students remained connected to the clinic long after graduation. Along with Wendy Leary ’98, Albert Greto ’97 serves on the MAELC Board. He provided vital support in the clinic’s appeal of a state permit to dredge Delaware’s Assawoman Canal to make it accessible for power boats. With the help of alumni and the enthusiastic involvement of Widener students, the clinic and MAELC will be forces for environmental good for a long time to come.

Associate Professor Kenneth T. Kristl is the director of the Environmental and Natural Resources Law Clinic. He also serves on the board of directors of the Mid-Atlantic Environmental Law Center.